

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 41 OF 2005
IN
WRIT PETITION NO. 2869 OF 1988

DALAMAL TOWER PREMISES
CO-OP. SOCIETY LTD. ... PETITIONERS.
VS.
THE STATE OF MAHARASHTRA
AND ANR. ... RESPONDENTS.

MR. D.J.KHAMBATTA ALONG WITH A.S.DOCTOR I/B. JUNNARKAR
& ASSOCIATES FOR THE PETITIONERS.
MR. S.K.NAIR AGP FOR THE RESPONDENTS.

Coram : S.K.Shah, J.
Date : December 2, 2005.

P.C.:-

1. Heard the Counsel on both sides.

2. The Petitioner alleges that the Respondents have committed contempt of the Order passed by this Court on 26th July, 1993, whereby the Rule was made absolute in terms of Prayer clause (c) and (d). Prayer clause (d) reads as under :-

" (d) a Writ of Mandamus or in the nature of Mandamus or any other writ, order or direction as contemplated under Art.226 of the Constitution of India be issued against the Respondents ordering them to execute in favour of the 3rd Petitioner - Society a lease of Plot No. 211, Block III, Backbay Reclamation Scheme at Nariman Point, Bombay 400 021, together with the buildings standing thereon for the residuary period of 99 years on the existing annual rent received by the 1st Respondent State and on the terms and conditions contemplated under the Memorandum of Terms and Conditions at Ex. "D" hereto."

2. The grievance made is that the agreement as contemplated in clause (d) has not been executed by the defendant. On the last occasion, both the advocates were directed to sit together and after taking instructions from the respective parties, they were directed to settle the appropriate terms and conditions, which were required to be incorporated in the agreement. The Respondents had already forwarded the draft agreement, duly signed by the concerned Authority of the Respondents, to the Petitioners. However, the Petitioners took certain objections to certain terms incorporated in the said agreement.

3. After taking instructions, the Respondents as also the Petitioners have agreed to make the changes in the terms of the lease agreement with regard to clause 2(f), 2(m) and 7, at page 75 and 80 of this petition.

4. The Respondent however, has dispute with regard to clause 2(t), which is not as per clause No. 19 the

memorandum and terms and conditions for the lease of plot from Block III, Backbay Reclamation, as directed in prayer clause (d), which was granted by this Court by the aforesaid Judgement and Order.

5. In clause 2(t) of the proposed draft agreement the words "any part thereof", "underlet" and "transfer fees/licence fee" are added. The proposed terms are objected on behalf of the petitioner and it is submitted that these words are tried to be added in clause 2(t). The learned Counsel for the Petitioner submits that this was not contemplated as per the original terms of the memorandum of terms and conditions and, therefore, they disputed the same.

6. The learned Counsel for the Respondents, however, submits that the original memorandum of terms and conditions were prepared a long back and they cannot be continued to be there in the proforma and necessary change as suggested in the draft agreement forwarded to the Petitioner, are not required to be incorporated which they can do under clause 16 of the original terms and conditions for the lease of the Plot from Block III.

7. The submission on behalf of the Respondents appears to be just and proper. By adding the words "any part" "underlet", "transfer fee/licence fee" in

clause 2(t) of the draft agreement or in original terms and conditions for the lease of Plot from Block III, in my view do not make much difference. However, if the parties have any dispute with regard to interpretation and incorporation of these words in clause 19 of the original memorandum of the terms and condition, the parties may get the same resolved by making an application to that effect to the regular court. The same cannot be decided in the contempt jurisdiction.

8. The Respondents shall, therefore, forward to the Petitioners, within four weeks from today, the fresh agreement, duly executed by them, incorporating agreed required changes in clause 2(f), 2(m) and 7. If the Petitioners are disputing any of the terms of the concerned draft agreement sent to them, they shall get the terms clarified by filing proper proceeding at the earliest but not later than three months. If no such application for clarification is made, the same should be executed by the Petitioners.

9. Under the circumstances, I do not find that any action is necessary to be taken in this contempt petition.

10. The contempt petition is accordingly disposed of.

.....

[S.K.Shah , J.]